

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

UNITED FRUIT COMPANY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -2775

Decision No. CU 4429

Counsel for claimant:

Victor G. Folsom, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by UNITED FRUIT COMPANY in the amended amount of \$1,294,665.43 based upon the asserted loss of a mortgage and the nationalization of its assets in Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

An officer of the claimant corporation has certified that the claimant was organized in the State of New Jersey, that at all times pertinent hereto more than 50% of its outstanding capital stock was owned by United States nationals and that 98.2% of the outstanding capital stock was owned by United States nationals on February 27, 1968. The Commission holds that the UNITED FRUIT COMPANY is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claim is made herein for assets owned by the Havana Branch of the claimant and the balance due on the principal and interest on a mortgage on property owned by the Norgulf Terminals, Inc. located in Havana, Cuba.

Evidence of record establishes that claimant owned a branch office at 16 San Pedro Street, Havana, Cuba, where it maintained certain personal property which is a part of this claim. It further appears from the record that by virtue of Resolution No. 1 of August 6, 1960, the Cuban Government nationalized the assets of claimant's branch office pursuant to Law 851 of July 6, 1960. The Commission, therefore, finds that claimant's assets in Cuba were nationalized on August 6, 1960, as a result of which claimant sustained a loss within the meaning of Title V of the Act.

Claimant has computed its claim as follows:

Balance on Unpaid Mortgage with interest	\$1,205,667.73
Large fixed tools and equipment	6,913.47
Furnishings and movable tools	6,137.37
Cash on hand or in banks	<u>75,946.86</u>
Total Claim	\$1,294,665.43

CU-2775

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

In support of the values claimed, claimant has submitted affidavits of its officers concerning the purchase prices of the tools, equipment, and furnishings and their book value on December 31, 1959, a balance sheet for the Havana Branch as of June, 1960 and a copy of the Inventory and Office Examination Report of the Havana Branch as of June, 1960..

The balance sheet for June, 1960 lists the assets of the branch as follows:

Current Assets		
Cash in Banks and on Hand	\$75,946.86	
Accounts Receivable	<u>28,974.84</u>	\$ 104,921.70
Deferred Assets		
Loans and Accounts Receivable non-current less reserve		1,100,250.00
Accounts with Affiliated Companies		15,241.30
Investments		2.00
Fixed Assets		11,414.72
Deferred Charges		
Prepaid Rentals, Taxes, Insurance, etc.	351.69	
Other	<u>12,076.61</u>	12,428.30
Transit Items		<u>= 43,475.04</u>
Total Assets		\$1,200,782.98

Upon consideration of the record, the Commission finds that the valuation most appropriate to the tools, equipment and furnishings and other assets of the claimant is that shown in the balance sheet for June, 1960 with certain adjustments discussed below.

Among the assets listed are accounts with the Cuban Electric Company for \$250.00 and with an affiliated company, the United Fruit Sugar Company for \$15,241.30, both companies qualifying as United States nationals.

Section 505(a) of the Act provides:

A claim under section 503(a) of this title based upon an ownership interest in any corporation, association, or other entity which is a national of the United States shall not be considered. A claim under section 503(a) of this title based upon a debt or other obligation owing by any corporation, association, or other entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico shall be considered, only when such debt or other obligation is a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Accordingly, those assets consisting of accounts with Cuban Electric Company and United Fruit Sugar Company can be considered only if those accounts were charges upon property nationalized, expropriated, intervened or taken by the Government of Cuba. Since there is no evidence establishing that these debts were charges upon property taken by the Government of Cuba, they may not be considered by the Commission.

The amount of \$1,100,000.00 which represents a mortgage on property in Havana, Cuba owned by the Norgulf Terminals, Inc. is included in the asset item of Loans and Accounts Receivable. The mortgaged property was nationalized by the Government of Cuba on

CU-2775

June 26, 1961 (see Claim of Norgulf Terminals, Inc., Claim No. CU-3670), at which time the unpaid principal of \$1,100,000.00 and interest of \$105,667.73 was due. The amount of interest due was not included in the balance sheet and consequently the assets should be increased by that amount - \$105,667.73.

The Commission, therefore, finds that the aggregate value of the assets owned by claimant's branch in Cuba was \$1,290,959.41, of which sum \$85,291.68 was lost on August 6, 1960 and \$1,205,667.73 on June 26, 1961.

It is noted that claimant is an American corporation and the claim is for the nationalization of its assets in Cuba and not for the taking of a Cuban corporation. The claimant is therefore entitled to recover in full for the seizure of its assets less the value of setoffs such as taxes due to the Cuban Government or valid liens against its Cuban assets.

Evidence of record shows that claimant was indebted to Cuba for taxes in the amount of \$20,231.06 which amount is deducted from the value of the assets seized on August 6, 1960. Accordingly, the Commission finds that claimant sustained losses within the meaning of Title V of the Act in the amount of \$1,270,728.35.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered as follows:

<u>FROM</u>	<u>ON</u>
August 6, 1960	\$ 65,060.62
June 26, 1961	<u>1,205,667.73</u>
Total	\$1,270,728.35

CU-2775

CERTIFICATION OF LOSS

The Commission certifies that UNITED FRUIT COMPANY sustained a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Million Two Hundred Seventy Thousand Seven Hundred Twenty-eight Dollars and Thirty-five Cents (\$1,270,728.35) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,  
and entered as the Proposed  
Decision of the Commission

22 JAN 1970

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*Sidney Feidberg*

~~THEODORE JAFFE, COMMISSIONER~~

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)

CU-2775